

REMARKS

Claims 1-70 are currently pending in the subject application and are presently under consideration. Claims 1, 3, 25, 67 and 68 have been amended as shown on pp. 2-13 of the Reply. Claims 2, 26, and 65 have been canceled. Claims 32-64, 66, 69 and 70 have been withdrawn.

Applicants' representative thanks the Examiner for the courtesies extended during the teleconference of April 24, 2007.

Favorable reconsideration of the subject patent application is respectfully requested in view of the comments and amendments herein.

I. Rejection of Claims 1-24, 65, 67 and 68 Under 35 U.S.C. §101

Claims 1-24, 65, 67 and 68 stand rejected under 35 U.S.C. §101 because the claimed invention is directed to non-statutory subject matter. Independent claim 1 has been amended herein to clearly illustrate that elements within such claims are components associated with a computer processor. In particular, claim 1 as amended is directed towards a system that facilitates identifying human interaction, comprising *a computer processor for executing the following software components*, the system is recorded on a computer-readable medium and capable of execution by a computer, comprising an access control component and an identification component, wherein the *access control component and the identification component* perform a function (e.g., control access to a computer-based action and application and determine that access is initiated by a human). (Support for these amendments can be found on pg. 7, lines 23-30). Accordingly, this claim includes functional descriptive material within a computer processor, thereby rendering it structurally and functionally interrelated to the computer processor and is therefore directed to statutory subject matter. Claims 67 and 68 have been similarly amended. Accordingly, this rejection should be withdrawn with regard to claims 1-24, 65, 67 and 68.

II. Rejection of Claims 1-5 Under 35 U.S.C. §102(e)

Claims 1-5 stand rejected under 35 U.S.C. §102(e) as being anticipated by Pinkas *et al.* (US 2004/0073813). It is respectfully requested that this rejection should be withdrawn for at

least the following reasons. Pinkas *et al.* does not teach or suggest each and every element as set forth in the subject claims.

A single prior art reference anticipates a patent claim only if it expressly or inherently describes each and every limitation set forth in the patent claim. *Trintec Industries, Inc. v. Top-U.S.A. Corp.*, 295 F.3d 1292, 63 USPQ2d 1597 (Fed. Cir. 2002); *See Verdegaaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). The identical invention must be shown in as complete detail as is contained in the ... claim. *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

The claimed subject matter relates to a system and/or methodology for generating order-based human interactive proofs (HIPs) as well as systems and methods that facilitate rating their difficulty automatically. In general, HIPs are puzzles that ask users to solve a problem to prove that they are a human being and are effectively employed to control access to any type of useful program, tool, device, system or set-up system (e.g., email, email account set-up, websites). In particular, independent claim 1 recites a system that facilitates identifying human interaction, comprising: *an access control component that controls access to one of a computer-based action and computer-based application; and an identification component that facilitates determining that access is initiated by a human, the identification component presenting an order-based problem to be solved before access is allowed, the order-based problem comprising an arrangement of a plurality of objects whereby a user is asked to correctly identify at least a subset of the objects as well as to identify them in a particular order, the order being based at least in part upon a set of instructions provided to the user, and the identification component communicating with an order-based problem database to retrieve order-based problems as needed.* Pinkas *et al.* does not expressly or inherently disclose the aforementioned novel aspects of applicants' claimed subject matter as recited in the subject claims.

Pinkas *et al.* discloses a method for establishing a secure channel between a user and a computer application. The method is performed by rendering to the user a randomly selected identifier; receiving input from the user based on both the randomly selected identifier and a secret identifier associated with the user; determining, based on the input whether the user demonstrates knowledge of the secret identifier; and authenticating or not authenticating the user based upon the outcome of said determining step. (See pg. 1, paragraph [0011]).

In contrast, applicants' claimed subject matter discloses a system that facilitates identifying human interaction. The system includes an identification component that facilitates determining that access has been initiated or requested by a human – rather than automatically by a computer. This is accomplished by presenting an order-based problem, such as a human interactive proof (HIP), to be solved. A correct response must be received by the identification component in order for access to be granted to the user by the access controller component.

When a user initiates an action (*via* a computer or other electronic device), such as requesting some sort of access to an application or action, the user's request can be received by the identification component, from which the user's response to the puzzle can be communicated to the access controller. The access controller component can then determine whether access is granted or denied. The identification component also communicates with a HIP database. From the HIP database, one or more HIPs can be retrieved as needed to identify whether the user is human. Order-based HIPs, unlike sequence-based HIPs, require different techniques to be solved. In some instances, some minimum amount of knowledge about one or more objects or images included in the HIP can be necessary or required for solving it. In addition to identifying individual elements and only the relevant elements (*e.g.*, not all are necessarily included in the correct answer), providing a correct order of the relevant elements is also important for solving the HIP. (*See* pg. 9, line 13-pg. 10, line 7).

Pinkas *et al.* merely discloses establishing a secure channel between a human user and an application running on a computer system, *via* generating a unique identifier (PIN) associated with a user. (*See* pg. 2, paragraph [0021]). Applicants' claimed system utilizes order-based HIPs from a database to determine that access has been initiated by a human. Order-based HIPs, unlike sequence-based HIPs or PINs, require different techniques to be solved, such as not only identifying individual elements, but also providing the correct order of the relevant elements. This is opposed to Pinkas *et al.*, in which a PIN is generated and a selected identifier, and the user identifies the difference between the identifier and the PIN. The secure application then compares the result and if the result reflects the fact that the user knows the PIN, the user is authenticated. Pinkas *et al.* does not utilize an order-based HIP to distinguish between a computer and a human. Accordingly, Pinkas *et al.* does not expressly or inherently disclose a system that provides *an identification component that facilitates determining that access is initiated by a human, the identification component presenting an order-based problem to be*

solved before access is allowed, the order-based problem comprising an arrangement of a plurality of objects whereby a user is asked to correctly identify at least a subset of the objects as well as to identify them in a particular order, the order being based at least in part upon a set of instructions provided to the user, and the identification component communicating with an order-based problem database to retrieve order-based problems as needed.

In view of at least the above, it is readily apparent that Pinkas *et al.* fails to expressly or inherently disclose applicants' claimed subject matter as recited in independent claim 1 (and claims 2-5 which respectively depend there from). Accordingly, it is respectfully requested that these claims be deemed allowable.

III. Rejection of Claims 6-31, 65, 67 and 68 Under 35 U.S.C. §103(a)

Claims 6-31, 65, 67 and 68 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Pinkas *et al.* in view of Mizrah (US 2004/0225880). It is respectfully requested that this rejection should be withdrawn for at least the following reasons. Pinkas *et al.* and Mizrah, individually or in combination, do not teach or suggest each and every element as set forth in the subject claims.

To reject claims in an application under §103, an examiner must show an un rebutted *prima facie* case of obviousness. A *prima facie* case of obviousness is established by a showing of three basic criteria. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. See MPEP §706.02(j). The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicants' disclosure. See *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

As stated *supra*, the claimed subject matter relates to a system and/or methodology for generating order-based human interactive proofs (HIPs) as well as systems and methods that facilitate rating their difficulty automatically. In particular, independent claim 25 recites a method that facilitates identifying human interaction comprising: *presenting an order-based HIP to a user desiring access to at least one of a HIP-controlled computer-based action and a HIP-*

controlled computer-based application, the order-based HIP being retrieved from a HIP database; requesting the user to solve the order-based HIP to gain the access, solving the order-based HIP, comprising: viewing an image comprising a plurality of objects; identifying at least a subset of the objects, the subset of objects determined at least in part upon a set of given instructions; and ordering the at least a subset of the objects, the ordering determined at least in part upon the set of given instructions; and determining whether access should be given based at least in part on the user's response to the HIP. The cited art, individually or in combination, fails to teach or suggest such aspects of the claimed subject matter.

Pinkas *et al.* discloses a method for establishing a secure channel between a user and a computer application. The method is performed by rendering to the user a randomly selected identifier; receiving input from the user based on both the randomly selected identifier and a secret identifier associated with the user; determining, based on the input whether the user demonstrates knowledge of the secret identifier; and authenticating or not authenticating the user based upon the outcome of said determining step. (See pg. 1, paragraph [0011]).

In contrast, applicants' claimed subject matter discloses a system that facilitates identifying human interaction. The system utilizes order-based HIPs to identify whether the user is human. When a user initiates an action (*via* a computer or other electronic device), such as requesting some sort of access to an application or action, the user's request is received, and the user's response to the HIP can be communicated to an access controller. The access controller component can then determine whether access is granted or denied. An identification component communicates with a HIP database. From the HIP database, one or more HIPs can be retrieved as needed to identify whether the user is human. Order-based HIPs, unlike sequence-based HIPs, require different techniques to be solved. In some instances, some minimum amount of knowledge about one or more objects or images included in the HIP can be necessary or required for solving it. In addition to identifying individual elements and only the relevant elements (*e.g.*, not all are necessarily included in the correct answer), providing a correct order of the relevant elements is also important for solving the HIP. (See pg. 9, line 13-pg. 10, line 7).

Pinkas *et al.* merely discloses establishing a secure channel between a human user and an application running on a computer system, *via* generating a unique identifier (PIN) associated with a user. (See pg. 2, paragraph [0021]). Applicants' claimed system utilizes order-based HIPs from a database to determine that access has been initiated by a human. Order-based HIPs,

unlike sequence-based HIPs or PINs, require different techniques to be solved, such as not only identifying individual elements, but also providing the correct order of the relevant elements. Accordingly, Pinkas *et al.* does not expressly or inherently disclose a method that provides *presenting an order-based HIP to a user desiring access to at least one of a HIP-controlled computer-based action and a HIP-controlled computer-based application, the order-based HIP being retrieved from a HIP database; requesting the user to solve the order-based HIP to gain the access, solving the order-based HIP, comprising: viewing an image comprising a plurality of objects; identifying at least a subset of the objects, the subset of objects determined at least in part upon a set of given instructions; and ordering the at least a subset of the objects, the ordering determined at least in part upon the set of given instructions; and determining whether access should be given based at least in part on the user's response to the HIP.*

Mizrah does not cure the deficiencies of Pinkas *et al.* with respect to independent claim 25, Mizrah discloses an interactive method for authentication of a client in a network environment which utilizes first and second “what user knows” authentication factors. The first and second “what user knows” authentication factors are algorithmically and parametrically independent. (See pg. 3, paragraph [0065]).

The Examiner relies on Mizrah to provide recognizing a path by the user, when the order-based problem is a “start to end” HIP wherein a user is required to find a path of a consistent type and identify objects such as characters along the path. (See Office Action dated 2-28-07, pg. 6). Accordingly, Mizrah also does not expressly or inherently disclose a method that provides *presenting an order-based HIP to a user desiring access to at least one of a HIP-controlled computer-based action and a HIP-controlled computer-based application, the order-based HIP being retrieved from a HIP database; requesting the user to solve the order-based HIP to gain the access, solving the order-based HIP, comprising: viewing an image comprising a plurality of objects; identifying at least a subset of the objects, the subset of objects determined at least in part upon a set of given instructions; and ordering the at least a subset of the objects, the ordering determined at least in part upon the set of given instructions; and determining whether access should be given based at least in part on the user's response to the HIP.*

In view of the aforementioned deficiencies of the cited art, it is respectfully submitted that this rejection be withdrawn with respect to independent claims 1, 25, 65, 67 and 68 (and claims 6-24 and 26-31 which respectively depend there from).

CONCLUSION

The present application is believed to be in condition for allowance in view of the above comments and amendments. A prompt action to such end is earnestly solicited.

In the event any fees are due in connection with this document, the Commissioner is authorized to charge those fees to Deposit Account No. 50-1063 [MSFTP440US].

Should the Examiner believe a telephone interview would be helpful to expedite favorable prosecution, the Examiner is invited to contact applicants' undersigned representative at the telephone number below.

Respectfully submitted,

AMIN, TUROC & CALVIN, LLP

/Marisa J. Zink/

Marisa J. Zink

Reg. No. 48,064

AMIN, TUROC & CALVIN, LLP
24TH Floor, National City Center
1900 E. 9TH Street
Cleveland, Ohio 44114
Telephone (216) 696-8730
Facsimile (216) 696-8731